

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

United States of America,)
 Plaintiff,)
vs.) No. 01-0306-01-CR-W-FJG
Samuel Gravitt,)
 Defendant.)

ORDER

Now pending before this Court is defendant's motion for amended judgment (Doc. #58), filed March 13, 2006; the government's response (Doc. #59), filed April 10, 2006, and defendant reply (Doc. #63), filed May 10, 2006.

Defendant entered a guilty plea on June 20, 2002, and was sentenced by this Court on December 5, 2002. A review of the record shows that the government filed a motion for downward departure and that defendant was sentenced below the guideline range. No appeal was taken.

Defendant's reply acknowledges that he has failed to state a rule whereby relief can be granted but submits that his claim is actionable under 28 U.S.C. § 2255, and seeks leave to file a successive § 2255 motion. Accordingly, defendant's motion for amended judgment is denied. Defendant's request to file a successive § 2255 is denied because he fails to make a *prima facie* showing that the claim he relies on is a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court.

/s/Fernando J. Gaitan, Jr.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: May 26, 2006
Kansas City, Missouri